

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JAMES NICHOLAS CANTLEY,**

**Plaintiff,**

**v.**

**Case No. 5:06-cv-3  
(Judge Stamp)**

**WEST VIRGINIA REGIONAL JAIL  
AUTHORITY, STEVEN CANTERBERRY,  
and JOHN KING,**

**Defendants.**

**OPINION/REPORT AND RECOMMENDATION**

On June 27, 2005, *pro se* plaintiff initiated this case by filing a civil rights complaint under 42 U.S.C. § 1983 and an Application to Proceed Without the Prepayment of Fees in the United States District Court for the Southern District of West Virginia. Because plaintiff challenges the conditions of his confinement at the Potomac Highlands Regional Jail, the case was transferred to this Court on December 23, 2005.

Upon receipt of the case by this Court, it was discovered that plaintiff had failed to accompany his Application to Proceed Without Prepayment of Fees with a copy of his Prisoner Trust Account Statement. Because the Court cannot determine plaintiffs' eligibility to proceed without the prepayment of fees without this form, a deficiency notice was sent to plaintiff on January 12, 2006. In the notice, plaintiff was advised to file the missing form within thirty (30) days from the date of the Order. Plaintiff was also notified that the failure to comply with the Order would result in the dismissal of his case. However, a review of the file shows that as of the date of this opinion, plaintiff has failed to file the necessary form, has not requested an

extension of time to do so, nor otherwise explained the reasons for noncompliance.

Accordingly, it is hereby recommended that pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, this case be DISMISSED without prejudice for the failure to prosecute unless the Court hears to the contrary within ten (10) days from the date of this Order. Any pleadings, motions, letters or other documents filed in response to this Report and Recommendation should also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge.<sup>1</sup>

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* Plaintiff and any counsel of record.

Dated: April 13, 2006.

  
JOHN S. KAUL  
UNITED STATES MAGISTRATE JUDGE

---

<sup>1</sup> Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4<sup>th</sup> Cir.), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4<sup>th</sup> Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).